S.B. CIVIL MISC. APPEAL NO. 527/2001

Date : 01.06.06

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. S.K. Sankhla for the appellant.
Mr. G. Vaishnav for the respondent.

= = = = =

Heard.

This is an appeal filed by the claimants against an award passed by the Motor Accident Claims Tribunal, Churu in Claim Case No. 42/98 dated 16.01.2001. Learned Tribunal by the order impugned has exonerated the Insurance company and has passed the award against Laxman Singh who was alleged to be driver after committing theft of the car in question.

Learned counsel for the appellant urged that the car belonged to respondent no.2 and was insured with respondent no.3 and it was their responsibility to keep the car in safe custody. If the same has been stolen, then it is the liability of the Insurance company because they have failed to keep the car in safe custody.

Learned counsel for the appellant further relied on a decision of this Court in the matter of United India Insurance Company Ltd Vs. Smt. Sugan Kanwar & Ors. reported in 2005 R.A.R. 12 (Raj.) wherein this Court has held that if an un-authorised person is driving the vehicle then this

would not exonerate the Insurance company because this is the doing of the insured. It is in between the Insurance company and the insured. The claimants cannot be deprived of his rights.

Learned counsel for the appellant further urged that there was a fracture of two bones viz Tibia and Fibula. The legs of an agriculturist are valuable assets by virtue of which he performs the agricultural operations. The injury report Ex.6 issued by the doctor shows that injury no.1 is a grievous one which has been believed by the tribunal and thus, awarded the amount which was too meagre in relation to fracture. Such fractured leg would keep the claimant bothering throughout the life. The fractures have been established by X-ray report by a private X-ray clinic Ex.9. The X-rays are placed on record and they show fractures. The situation of the leg as described shows fractures of Tibia and Fibula. Both the bones are part of vital limbs of the body and therefore, the Tribunal was not correct in awarding only an award of Rs. 8800/-.

Per contra, learned counsel for the Insurance company urged that it is not a proved case of fracture. The certificate as issued by the X-ray clinic is a private one and therefore, the same could not have been relied upon. The injury report is not the clear proof of fractures as has been shown in Ex.9.

Learned counsel for the Insurance company further urged that the Insurance company cannot be held liable because the car was not within

the custody of the insured and was not being driven under the direction and control of the insured. It had been stolen and therefore, exoneration of the Insurance company is rightfully done.

I have considered the rival submissions and have given my thoughtful consideration. As far as the injury is concerned, that is established by Ex.6. The doctor has given the certificate to the extent that it is a fracture. Merely, because the certificate is of a private clinic, it would not dis-entitle the claimant from establishing that he has got his leg fractured. The situation as exists in the Government hospital is not conducive by any standards that X-ray should be produced from Government hospitals only because they are non-functional or the bureaucratic red tapism prevents them to go to the Government X-ray clinics. Therefore, the finding of the Tribunal to the extent of fracture cannot be doubted. As regards the defence of the Insurance company that it has no responsibility because the car was stolen and was being driven by un-authorised person. Suffice it to say that in view of the decision of this Court in United Insurance Company ltd. Vs. Smt. Sugan Kanwar (Supra), the Insurance company has wrongly been exonerated and therefore, the Insurance company is liable to compensate the claimants. That being the position, the award of Rs. 8,800/- for two fractures of leg is considered too less and that is enhanced to Rs.50,000/-.

The appeal is allowed as indicated above. If the Insurance

company feels that they can fasten the liability on the wrongful driver, then they will be at liberty to proceed in that direction, if law permits.

(BHAGWATI PRASAD), J.

bjsh